

# **CITY OF HAYWARD**

## **AGENDA REPORT**

AGENDA DATE 11/01/05

AGENDA ITEM 4

WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council

**FROM:** Director of Community and Economic Development

**SUBJECT:** Public TEFRA Hearing, Inducement and Authorization to Issue Bonds for the Purchase and Rehabilitation of the Josephine Lum Lodge Senior Apartments

### **RECOMMENDATION:**

It is recommended that the City Council:

- Adopt the attached resolution authorizing the issuance of \$15,000,000 in tax-exempt multifamily housing revenue bonds to assist in the purchase and rehabilitation of the Josephine Lum Lodge Apartments;
- Authorize the City Manager to execute all other implementing documents in connection with the proposed issuance.

### **DISCUSSION:**

On September 21, 2004, Council conducted a TEFRA hearing and conditionally approved a resolution authorizing the issuance of up to \$15 million in tax-exempt multifamily mortgage revenue bonds for the acquisition and rehabilitation of the Josephine Lum Lodge Senior Apartments. The TEFRA hearing by law remains valid for one year. Council also authorized the City to apply to the California Debt Limit Allocation Committee (CDLAC) for an allocation of multifamily mortgage revenue bonds. In July 2005, at the request of Eden Housing, Inc. (EHI), the City applied for an allocation of \$15 million in mortgage bond authority. In September 2005, the City was awarded the requested allocation. Eden Housing has requested that the City of Hayward issue these bonds.

The City Council, if it wishes to approve the City acting as issuer, needs to take several steps: first, induce the bonds, meaning that the Council authorize, in general terms, the issuance. This act the Council took last September. Second, it needs to hold a public hearing as required by the TEFRA legislation passed by Congress. While Council did hold such a hearing last September, the validity of this hearing has expired, so Council needs to conduct this hearing again. The attached bond resolution authorizes the City Manager to execute the associated bond documents, which are on file in the office of the City Clerk. Since minor document changes often occur until the day of closing, it is advisable for the Council to authorize the City Manager to review any proposed changes, negotiate with the various parties as necessary, and approve any needed changes to facilitate the closing. The resolution also names the law firm of Jones Hall as bond counsel and CSG Advisors as financial advisor to the City in connection with the issuance of the bonds.

Josephine Lum Lodge, built by EHI in 1973, has provided 150 units of quality senior housing for over 30 years. Located in South Hayward, at Oliver Drive and West Tennyson Road on four acres, the property is surrounded by older and newer multifamily rentals and condominiums. The property has served and proposes to continue to serve seniors with incomes below 50% of Area Median Income (AMI). The unit configuration will remain the same.

Currently, significant renovation is required, and EHI proposes to transfer ownership from Josephine Lum Lodge, Inc. (the current owner and a subsidiary of EHI) to a newly formed nonprofit general partner in order to permit an infusion of tax-credit equity to fund these renovations. In order to secure these four-percent tax credits, the City, as authorized by City Council, applied for an award of tax-exempt bond allocation from the State in July of 2005, receiving that award in September. This allocation permits EHI to receive four-percent tax credits from the State on a noncompetitive basis.

The renovations include replacement of all roofs; reconstruction of all second floor walkways and balconies; replacement of all windows and sliding doors; reconstruction of all exterior stairways; replacement of both elevators; and interior apartment upgrades to all units. The site will be re-graded to improve drainage and new perimeter fencing installed to improve security. Finally, the drive and parking lot will be resurfaced.

Eden Housing will use several sources of funds to pay for the rehabilitation: tax-exempt bonds; tax-credit equity; developer equity; a loan from Citibank; a note carried back by the seller; a loan of existing property reserves; and funds released from the Tyrell Gardens security escrow. Because some sources are used during construction while others, primarily the tax-credit equity, replace the construction sources at completion, the total amount of funds listed exceeds the net cost of the project.

The Tyrell Gardens security escrow funds were granted to Eden by the City of Hayward in 1985 as part of a financial guarantee on mortgages at the Tyrell Gardens owner-builder project at Sunvale Court. The agreement between the City and Eden Housing stated that once these funds were no longer needed as security, Eden would be required to expend them only for low and moderate income housing activities in the City of Hayward that were approved by the City Manager or by his designee. All of the mortgages that initially required the security have been paid off. After consultation with Eden staff on the extensive rehabilitation needs at Josephine Lum Lodge, the remaining security funds in the amount of approximately \$156,000 were administratively approved for that purpose.

The construction bonds will be recourse to Eden Housing, Inc., and the permanent portion of the debt will be secured by a first deed of trust. EHI has accepted a proposal from Citibank to privately purchase these bonds, unrated, for both the construction and permanent periods. The bonds will have a term of 20 years. The documents provide that the City does not back the bonds and is not liable to make bond payments under any circumstances.

CDLAC has awarded the requested allocation of approximately \$15 million in tax-exempt bonding authority and EHI is requesting that the City issue these bonds for the acquisition and rehabilitation of the property. Of the entire financing, approximately \$6,500,000 will be used for

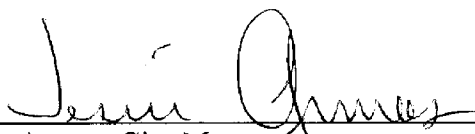
acquisition and \$10,200,000 used for property rehabilitation. The anticipated closing and bond issuance date is November 30, 2005.

Staff believes that this plan allows this property, over 30 years old, to receive extensive renovations and remain in the control of an entity committed to long-term affordability; also, the proposal does not change the current tenancy or rent levels. Staff therefore recommends the proposed actions for approval by Council.

Recommended by:

  
\_\_\_\_\_  
Sylvia Ehrenthal, Director of Community  
and Economic Development

Approved by:

  
\_\_\_\_\_  
Jesús Armas, City Manager

Resolution

# DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

*mal*  
*10/18/05*

RESOLUTION OF THE CITY OF HAYWARD  
AUTHORIZING THE ISSUANCE, SALE AND DELIVERY  
OF CITY OF HAYWARD MULTIFAMILY HOUSING  
REVENUE BONDS (JOSEPHINE LUM LODGE) 2005 SERIES  
A, AUTHORIZING THE EXECUTION AND DELIVERY OF  
A MASTER PLEDGE AND ASSIGNMENT, AN AGENCY  
AGREEMENT AND A REGULATORY AGREEMENT, AND  
AUTHORIZING THE EXECUTION AND DELIVERY OF  
AND APPROVING OTHER RELATED DOCUMENTS AND  
APPROVING OTHER RELATED ACTIONS IN  
CONNECTION THEREWITH

WHEREAS, Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California (the "Act"), authorizes cities to incur indebtedness for the purpose of financing the acquisition, rehabilitation and development of multifamily rental housing facilities to be occupied in part by persons of low and very low income;

WHEREAS, the City of Hayward (the "City") hereby finds and declares that it is necessary, essential and a public purpose for the City to engage in a program (the "Program") of financing the acquisition, rehabilitation and development of multifamily rental housing facilities, and has determined to borrow money for such purpose by the issuance of revenue bonds as authorized by the Act;

WHEREAS, the City hereby finds and declares that this resolution is being adopted pursuant to the powers granted by the Act;

WHEREAS, Josephine Lum Lodge, L.P., a California limited partnership (the "Borrower"), has requested that the City issue and sell the Bonds (hereinafter defined) for the purpose of financing the acquisition, rehabilitation and development of a multifamily rental housing project commonly known as Josephine Lum Lodge, located at 2747 Oliver Drive, Hayward, California, (the "Project"); and

WHEREAS, the Bonds will be considered to be "qualified exempt facility bonds" under Section 142(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and Section 147(f) of the Code requires that the "applicable elected representative" with respect to the City hold a public hearing on and approve the issuance of the Bonds; and

WHEREAS, this City Council is the elected legislative body of the City; and

WHEREAS, a notice of public hearing in a newspaper of general circulation in the City has been published, to the effect that a public hearing would be held by this City Council on November 1, 2005, regarding the issuance of the Bonds by the City and the nature and location of the Project; and

WHEREAS, this City Council held said public hearing on such date, at which time an opportunity was provided to present arguments both for and against the issuance of such Bonds and the nature and location of the Project; and

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the Bonds and the implementation of the Program as contemplated by this resolution and the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State of California, including the Act.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward, as follows::

Section 1. The City hereby finds and declares that the above recitals are true and correct.

Section 2. Pursuant to the Act and the Pledge and Assignment (hereinafter defined), revenue bonds of the City, designated as "City of Hayward Multifamily Housing Revenue Bonds (Josephine Lum Lodge) 2005 Series A" in an aggregate principal amount not to exceed \$15,000,000 (the "Bonds"), are hereby authorized to be issued. The Bonds shall be executed by the manual or facsimile signature of the City Manager of the City, and attested by the manual or facsimile signature of the City Clerk of the City, in the form set forth in and otherwise in accordance with the Pledge and Assignment.

Section 3. The form of master pledge and assignment by and among the City, Citicorp North America, Inc., as Agent, and Citicorp North America, Inc., as Holder (the "Pledge and Assignment"), in the form on file with the City Clerk, is hereby approved. The City Manager is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Pledge and Assignment in said form, with such additions thereto or changes therein as are recommended or approved by the City Manager upon consultation with bond counsel to the City, including such additions or changes as are necessary or advisable in accordance with Section 8 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Pledge and Assignment.

Section 4. The form of master agency agreement by and between the City and Citicorp North America, Inc., as agent (the "Agency Agreement"), in the form on file with

the City Clerk, is hereby approved. The City Manager is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Agency Agreement in said form, with such additions thereto or changes therein as are recommended or approved by the City Manager upon consultation with bond counsel to the City, including such additions or changes as are necessary or advisable in accordance with Section 8 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Agency Agreement.

Section 5. The form of regulatory agreement and declaration of restrictive covenants relating to the Bonds (the "Regulatory Agreement") among the City and the Borrower, in the form on file with the City Clerk, is hereby approved. The City Manager is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Regulatory Agreement in said form, with such additions thereto or changes therein as are recommended or approved by such officers upon consultation with bond counsel to the City, including such additions or changes as are necessary or advisable in accordance with Section 8 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Regulatory Agreement.

Section 6. The Bonds, when executed, shall be delivered to Citicorp North America, Inc., as the initial holder thereof, upon the initial funding of the Loan (as defined in the Pledge and Assignment) with the purchase price for the Bonds.

Section 7. The law firm of Jones Hall, A Professional Law Corporation, is hereby named as bond counsel to the City in connection with the issuance of the Bonds. The financial advisory firm of CGS Advisors, Inc. is hereby named as financial advisor to the City in connection with the issuance of the Bonds. The fees and expenses of bond counsel and the financial advisor are to be paid solely from the proceeds of the Bonds or directly by the Developer.

Section 8. All actions heretofore taken by the officers and agents of the City with respect to the establishment of the Program and the sale and issuance of the Bonds are hereby approved, confirmed and ratified, and the proper officers of the City, including the City Manager, are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Bonds in accordance with this Resolution and resolutions heretofore adopted by the City and in order to carry out the Program, including but not limited to those certificates, agreements, deeds of trust and other documents described in the Pledge and Assignment, the Agency Agreement, the Regulatory Agreement and the other documents herein approved and any certificates, agreements or documents as may be necessary to further the purpose hereof, including, but not limited to, any subordination agreement required to be executed in connection with the proposed financing, but which shall not create any obligation or liability of the City other than

with respect to the revenues and assets derived from the proceeds of the Bonds.

Section 9. This resolution shall take effect immediately upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA, \_\_\_\_\_, 2005.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward